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Guaranty Solutions, LLC, as Assignee of  
Darryl Snyder, Trustee of the Edward V. Caraccia  
and Lillie Faye Caraccia Trust Dated 9/4/85

**UNITED STATES BANKRUPTCY COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

In re	)	CASE NO.: 1:20-bk-10276-VK
	)	
HORMOZ RAMY	)	Chapter 7
	)	
Debtor.	)	MEMORANDUM OF POINTS AND
	)	AUTHORITIES IN SUPPORT OF
	)	MOTION FOR RELIEF FROM STAY -
	)	NONBANKRUPTCY FORUM
	)	

Date: September 23, 2020  
Time: 9:30 am  
Courtroom: 301

Movant creditor WV SPE 2017-2A, LLC, as Assignee ("Movant"), submits this  
Memorandum of Points and Authorities in support of its Motion for Relief from the Automatic  
Stay.

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

On or about September 29, 2010, a judgment was entered in the California Superior  
Court, County of Ventura against Debtor HORMOZ RAMY. Movant, owner of said judgment,  
seeks relief from stay for the purpose of: (1) amending the application for renewal of its state

1 court judgment, which has been timely renewed; (2) amending abstracts of its state court  
2 judgment; and (3) recording a certified copy of the amended application for renewal to preserve  
3 Movant's lien priority on property that secures a debt incurred by the Debtor. As set forth  
4 below, relief should be granted because the state court judgment was timely renewed, however,  
5 the forms used for the renewal of the judgment contain errors which must be corrected for WV  
6 SPE 2017-2A, LLC to maintain its lien priority, which may be accomplished even after the 10-  
7 year anniversary of the judgment because state law expiration dates are extended by the  
8 Bankruptcy Code's automatic stay. Additionally, relief should be granted under the doctrines  
9 of mandatory abstention.

## 10 II. STATEMENT OF FACTS

11 On or about September 29, 2010, a judgment was entered in the California Superior  
12 Court, County of Ventura against Debtor HORMOZ RAMY and in favor of Darryl Snyder,  
13 Trustee of the Edward V. Caraccia and Lillie Faye Caraccia Trust Dated 9/4/85, known as case  
14 number 56-2010-00377297-CU-UD-SIM, in the amount of 205,575.00 (the "Judgment").  
15 (Declaration of Mark N. Strom ("Strom Decl.") ¶ 2.)

16 The Abstract of Judgment was issued on the Judgment by the court and recorded in  
17 three counties. In preparing the Abstract of Judgment, prior counsel neglected to include the  
18 Debtor's last four of his social security number and driver license number, as required on this  
19 mandatory form on page one, items 4b and 4c. (Strom Decl. ¶ 3.)

20 An Abstract of Judgment was recorded on November 10, 2010, by Darryl Snyder,  
21 Trustee of the Edward V. Caraccia and Lillie Faye Caraccia Trust Dated 9/4/85 with the  
22 Ventura County Recorder's Office, known as Instrument No.: 20101110-00175728-0. (Strom  
23 Decl. ¶ 4.)

24 An Abstract of Judgment was recorded on December 27, 2010, by Darryl Snyder,  
25 Trustee of the Edward V. Caraccia and Lillie Faye Caraccia Trust Dated 9/4/85 with the Los  
26 Angeles County Recorder's Office, known as Instrument No.: 20101914179. (Strom Decl. ¶ 5.)  
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1 An Abstract of Judgment was recorded on May 18, 2011, by Darryl Snyder, Trustee of  
2 the Edward V. Caraccia and Lillie Faye Caraccia Trust Dated 9/4/85 with the Riverside County  
3 Recorder's Office, known as Instrument No.: 2011-0218655. (Strom Decl. ¶ 6.)

4 On January 29, 2013, Darryl Snyder, Trustee of the Edward V. Caraccia and Lillie Faye  
5 Caraccia Trust Dated 9/4/85, assigned the Judgment to Guaranty Solutions, LLC, an Arizona  
6 limited liability company. (Strom Decl. ¶ 7.) On April 5, 2019, Guaranty Solutions, LLC  
7 renewed the Judgment in the amount of \$380,928.59, inclusive of accrued interest and post-  
8 judgment costs. In renewing the Judgment, prior counsel neglected to include a listing of the  
9 three Abstracts of Judgment that were previously recorded, as described above. (Strom Decl. ¶  
10 8.)

11 On May 22, 2020, Guaranty Solutions, LLC, an Arizona limited liability company  
12 assigned the Judgment to WV SPE 2017-2A, LLC, a California limited liability company. WV  
13 SPE 2017-2A, LLC, a California limited liability company, as Assignee, is currently the holder  
14 and owner of the Judgment. (Strom Decl. ¶ 9.)

15 On or about February 4, 2020, Debtor HORMOZ RAMY filed the instant Bankruptcy  
16 case. Debtor has erroneously omitted the Judgment from his schedules in the instant  
17 Bankruptcy Petition. (Strom Decl. ¶ 10.)

18 The judgment would have expired on September 29, 2020. Prior counsel timely  
19 renewed the Judgment on April 5, 2020, but in so doing, neglected to include the abstracts in  
20 the renewal application and neglected to include debtor's social security number and driver  
21 license number in the abstracts. Thus, to preserve its lien priority, movant must obtain a court  
22 order from state court for leave to amend the application for renewal of judgment and to record  
23 certified copies of the renewals in Ventura, Los Angeles and Riverside counties. (Strom Decl. ¶  
24 11.)

25 Movant seeks relief from the automatic stay for the purpose of amending the  
26 application for renewal of its state court judgment, which was timely renewed, amending  
27 abstracts of its state court judgment, and for recording a certified copy of the amended  
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1 application to preserve Movant's lien priority. (Strom Decl. ¶ 12.) Counsel just recently  
2 received this file from Movant, and has immediately moved for relief from stay. (Strom Decl. ¶  
3 13.)

4 Neither the Debtor nor the Trustee will be unduly prejudiced by the motion because  
5 Movant only seeks relief for the limited purpose of correcting its renewal of the state court  
6 judgment and recording the lien. Movant agrees to stay enforcement of the underlying state  
7 court judgment for all purposes as to the Debtor's personal liability or liability of the estate with  
8 regard to the Judgment. (Strom Decl. ¶ 14.)

9 Given the existence of the state court Judgment as evidenced herein and the limited  
10 relief sought by Movant, Movant has established a *prima facie* case for the granting of its motion  
11 for relief from the automatic stay to be able to correct its renewal of the state court Judgment.  
12 (Strom Decl. ¶ 15.)

### 13 **III. CAUSE EXISTS TO GRANT RELIEF FROM STAY**

14 11 U.S.C. § 362(d)(1) of the Bankruptcy Code provides that a court shall grant relief from  
15 the stay “for cause, including the lack of adequate protection of an interest in property.” Thus,  
16 “[o]ther than the absence of adequate protection, § 362(d)(1) does not provide guidance as to  
17 what constitutes ‘cause’ which justifies relief from the automatic stay.” *In re Mirant Corp., et*  
18 *al.*, 303 B.R. 319, 330 (Bankr. N.D. Tex. 2003). Accordingly, “cause” is “an intentionally broad  
19 and flexible concept.” *Sterling Bank & Trust v. Merchant (In re Merchant)*, 256 B.R. 572, 575  
20 (Bankr. W.D. Penn. 2000). What constitutes “cause” for lifting the automatic stay must be  
21 determined on a case-by-case basis. *Coleman v. Aegis Mort. Corp. (In re Coleman)*, 1999 U.S.  
22 Dist. LEXIS 15635, \*5 (N.D. Tex. 1999). Additionally, the legislative history of § 362(d)(1)  
23 provides, in pertinent part, that “[i]t will often be more appropriate to permit proceedings to  
24 continue in their place of origin, when no great prejudice to the bankruptcy estate would result, in  
25 order to leave the parties to their chosen forum and to relieve the bankruptcy court from any  
26 duties that may be handled elsewhere.” H.R. Rep. No. 595, 95th Cong., 1st Sess. 341 (1977).

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1           **A. Abstention Applies.**

2           In addition to the “cause” raised above, further cause may exist for lifting the automatic  
3 stay where a bankruptcy court may or must abstain from deciding issues in favor of a pending  
4 state court action. *In re Castlerock Properties*, 781 F.2d 159, 163 (9th Cir. 1986). 28 U.S.C. § 1334©)  
5 sets forth when a bankruptcy court must and may abstain in favor of state court adjudication of  
6 an issue. Specifically, Section 1334(c)(2) provides, in pertinent part, that “[u]pon timely motion  
7 of a party in a proceeding based upon a State law claim or State law cause of action, related to a  
8 case under title 11 but not arising under title 11 or arising in a case under title 11, with respect  
9 to which an action could not have been commenced in a court of the United States absent  
10 jurisdiction under this section, the district court shall abstain from hearing such proceeding if  
11 an action is commenced, and can be timely adjudicated, in a State forum of appropriate  
12 jurisdiction.” (“Mandatory Abstention”).

13           Additionally, Section 1334(c)(1) provides that: “Except with respect to a case under  
14 chapter 15 of title 11 [11 USC §§ 1501 et seq.], nothing in this section prevents a district court in  
15 the interest of justice, or in the interest of comity with State courts or respect for State law, from  
16 abstaining from hearing a particular proceeding arising under title 11 or arising in or related to  
17 a case under title 11.” (“Permissive Abstention”). This provision demonstrates that “the intent  
18 of Congress that concerns of comity and judicial convenience should be met, not by rigid  
19 limitations on the jurisdiction of federal courts, but by the discretionary exercise of abstention  
20 when appropriate in a particular case.” *Wood v. Wood (In re Wood)*, 825 F.2d 90, 93 (5<sup>th</sup> Cir.  
21 1987.)

22           There are seven required elements for Mandatory Abstention to apply: (1) a timely  
23 motion; (2) a purely state law question; (3) a non-core proceeding that is merely a proceeding  
24 related to a bankruptcy case; (4) no basis for federal jurisdiction apart from the bankruptcy case;  
25 (5) a pending action in state court; (6) the state court action can be timely adjudicated; (7)  
26 appropriate jurisdiction exists in the state forum. *Sedlachick v. National Bank (In re Kold Kist*  
27 *Brands, Inc.)*, 158 Bankr. 175, 178 (C.D. Cal. 1993.)

1 Here, all of the above elements are satisfied. Specifically, with regard to the first,  
2 second, fourth, fifth and seventh elements, this motion is timely brought and seeks relief from  
3 stay to proceed with a renewal of the state court judgment.

4 With regard to the third element, the judgment “relates to” the Bankruptcy but does not  
5 “arise under” the Bankruptcy Code or “arise in” the Bankruptcy. Thus, it is not a core  
6 proceeding. See 28 U.S.C.A. § 157(b); *In re Wood, supra*, 825 F.2d at 97. Finally, the sixth element  
7 is also met as the corrections to the renewal of judgment can be accomplished timely, as  
8 discussed below. Therefore, cause exists to grant relief from stay.

9 **B. A Discharge In Bankruptcy Would Not Affect The Lien.**

10 A discharge in Bankruptcy would not affect Movant’s *in rem* remedies to foreclose on its  
11 judgment lien. 11 U.S.C. § 522(c)(2); *also see, Johnson v. Home State Bank* (1991) 501 U.S. 78, 83,  
12 111 S. Ct. 2150, 2153 [Chapter 7 discharge in bankruptcy eliminates a personal liability, but it  
13 does not affect a lien that provides security for the debt.]

14 Movant seeks relief to record corrected certified copies of the application for renewal of  
15 judgment, which extends Movant’s lien priority from the date of the recorded Abstracts of  
16 Judgment. See, *California Code of Civil Procedure* § 683.180(a) (judgment lien extended for 10  
17 years from date of the filing of application if a certified copy of the application for renewal is  
18 recorded where the real property subject to the judgment lien is located before the judgment  
19 lien expires).

20 **C. State Law Expiration Dates Are Extended By The Automatic Stay.**

21 As noted above, the Judgment would have expired on September 29, 2020. Prior  
22 counsel timely renewed the Judgment on April 5, 2020, but in so doing, neglected to include the  
23 abstracts in the renewal application and neglected to include debtor’s social security number  
24 and driver license number in the abstracts. Thus, to preserve its lien priority, these items must  
25 be corrected. This may be accomplished, even after the 10-year anniversary of the judgment,  
26 because state law expiration dates are extended by the Bankruptcy Code’s automatic stay.  
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1 11 U.S.C. section 108©) extends the period in which to renew a California judgment by  
2 30 days after the creditor has received notice that the stay has terminated, where the judgment  
3 expires during the pendency of the debtor's bankruptcy case. *In re Spiritos* (9<sup>th</sup> Cir. 2000) 221  
4 F.2d 1079. This case is cited by with approval California courts, e.g., *Inco Development Corp. v.*  
5 *Superior Court* (2005) 131 Cal.App. 4<sup>th</sup> 1014.

6 Likewise, *In re Swintek* 906 F.3d 1100 (2017) holds that a state law expiration date is  
7 extended by the Bankruptcy Code's automatic stay. Specifically, the case holds that  
8 Bankruptcy Code section 108©) applies to afford a prepetition judgment creditor an additional  
9 30 days after termination of the automatic stay of Bankruptcy Code section 263(a) to preserve a  
10 lien, created prepetition under California law upon service of an order for appearance and  
11 examination, which otherwise would have lapsed during the bankruptcy proceedings a year  
12 after its creation, unless renewed by the California court. Under the reasoning of *Swintek*, it  
13 follows that a judgment lien on an interest in real property, such as the lien at issue in the  
14 instant case, which otherwise would have lapsed during the bankruptcy proceedings (under  
15 CCP sec. 683.180) may be timely renewed up to 30 days after the termination of the automatic  
16 stay.

17 **IV. CONCLUSION**

18 Based on the foregoing, Movant respectfully requests that its Motion for Relief from the  
19 Automatic Stay be granted.

20 Respectfully submitted,

21 VERUS LAW GROUP, APC

22  
23 Dated: August 24, 2020

24 By: 

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Mark N. Strom  
Attorneys for Creditor WV SPE 2017-2A,  
LLC, as Assignee